

Cascading Set-Asides

Achieving small business goals
via multi-tiered competition

What is cascading?

- ✍ Multi-tiered, competitive, small business set-aside source selection process
- ✍ All types of businesses may submit offers
- ✍ Offers considered in hierarchical tiers (e.g., 8(a), HUBZone, small business)
- ✍ Offers may cascade to lower tier if inadequate competition at their tier
- ✍ Award made at highest tier with adequate competition

Origin of Cascading

- ✍ HUD's Real Estate Owned Single Family Management & Marketing contracts:
 - ✍ New effort for HUD & industry
 - ✍ Qualified small business sources unknown
 - ✍ Predecessor small business contractors protested new requirement/solicitation
 - ✍ Need for continued small business participation

The Problem

- ✍ Maximize opportunity to small businesses given -
 - ✍ New, complex requirement
 - ✍ Unknown universe of qualified small businesses
- ✍ Minimize potential for delays & cost of reprocurement due to inadequate traditional set-aside sources

HUD-SBA Solution

- ✍ Establish reasonable number of geographic service areas for award
- ✍ Use traditional set-asides where appropriate
- ✍ Create new cascading set-aside to -
 - ✍ Attract all types of businesses
 - ✍ Give preference to small & small disadvantaged businesses
- ✍ Used effectively twice for M&M

2004 M&M Cascade

- ✍ SET-ASIDES:
 - ✍ 1 - 8(a) set-aside
 - ✍ 3 - Small business set-aside
- ✍ CASCADES:
 - ✍ 3 - 3-tier cascades (1st 8(a) > 2nd Small Business > 3rd Unrestricted)
 - ✍ 14 - 2-tier cascades (1st Small business > 2nd Unrestricted)
- ✍ FULL & OPEN – 3 Areas

Cascading Success – M&M 2004

- ✍ 87 firms submit 243 proposals
- ✍ 23 major contracts awarded:
 - ✍ 14 small disadvantaged businesses
 - ✍ 6 small businesses
 - ✍ 3 large businesses
- ✍ \$1.6 billion total award value
- ✍ \$1.3 billion awarded to small & small disadvantaged firms

GAO upholds cascading

“A solicitation provision stating that a section 8(a) set-aside will become a small business set-aside if fewer than two acceptable offers from 8(a) firms are received is *not contrary to statute or regulation, or unfair to small businesses.*” (B-281352, B-281353)

GAO support continued...

- ✍ “We are aware of **no statute or regulation that would prohibit this approach** [...]. Since the scheme [...] will have the effect of **increasing the opportunity for small business concerns** under an otherwise unrestricted solicitation, we have **no basis to object to this set-aside scheme** as unduly burdensome for small business concerns.”
- ✍ Upheld also under B-289277, B-289277.2, B-290676 & B-290676.2

GAO offers cascading as a solution...

✍ B-290925, Intermark Inc. Oct. 2002

“...there is no conflict in applying the two preferences [...]. The solicitation can include a ‘cascading’ set of priorities or preferences whereby competition is limited to small business concerns and [other entities]”

Cascade Today - New Challenges

✍ More competing set-aside programs -

✍ HUBZone

✍ Service Disabled Veteran Owned Small Business

✍ Greater complexity in creating cascades

✍ HUBZone - 8(a) parity

✍ Harder to justify bundling

When to use cascading

✍ New requirements

✍ No precedent of performance by small business

✍ Inconclusive market research (i.e., adequate competition for traditional set-asides not evident)

✍ Above \$3M (if 8(a) included)

When not to!

- ✍ Market research reveals adequate sources for traditional set -aside(s)
- ✍ Requirement previously met by small business

Key steps

- ✍ Conduct market research
CCR Dynamic Search
- ✍ Assess status of agency small business goals achievement
- ✍ Design the cascade
- ✍ Solicit & evaluate offers
- ✍ Select competitive offer at highest tier possible

Designing a Cascade

- ✍ Hierarchy must be followed -
 - ✍ 8(a)/HUBZone (these have parity)
 - ✍ SDVOSB
 - ✍ Other small businesses
 - ✍ Other-than-small businesses
- ✍ Numerous possible configurations
- ✍ Not all business types need be included
- ✍ Other-than-small-business always the lowest tier

Sample Cascade

1st tier: 8(a) Concerns*

2nd tier: HUBZone Small Business*

3rd tier: Other Small Businesses

4th tier: Other-Than-Small Businesses

***CAUTION!** These may *not* cascade to next tier *unless* also classified at that tier (e.g., both 8(a) & HUBZone concern). They *may* cascade to small business tier.

Evaluating Offers

- ⌘ Start with highest tier -
 - ⌘ Consider only these offers
 - ⌘ Determine acceptable offers
 - ⌘ If adequate competition make award
- ⌘ If inadequate competition -
 - ⌘ Proceed to next lower tier
 - ⌘ Cascade down acceptable offer *if* possible
- ⌘ Proceed through tiers, as needed

Adequate Competition

- ⌘ 8(a) -
 - ⌘ Competitive offers received from at least 2 qualified, responsible concerns; and
 - ⌘ Award can be made at fair market price
- ⌘ HUBZone, SDVOSB & Small Business -
 - ⌘ Both conditions above; *or*
 - ⌘ One acceptable offer received from responsible concern, *and* Contracting Officer decides to award to it

The fine print...

- ⚡ 8(a) firm may **not** cascade to HUBZone tier unless firm is also HUBZone
- ⚡ 8(a) or HUBZone may **not** cascade to SDVOSB tier unless also an SDVOSB
- ⚡ 8(a), HUBZone & SDVOSB **may** cascade to “Other Small Business” if that tier is reached

Caution!

- ⚡ **Don't** include tiers for business types that have no formal set-aside authority (e.g., women-owned small businesses)
- ⚡ **Don't** use prices from lower-tier offers (e.g., large businesses) to establish price reasonableness of higher-tier offers **unless** the lower tier is reached
- ⚡ **Don't** forget to make proper 8(a) offers & obtain SBA acceptance of 8(a) awards
- ⚡ **Do** use best value tradeoff selection approach

Final Thoughts

- ⚡ Cascading can be complicated
- ⚡ Requiring activities must understand it
- ⚡ Clear direction to offerors is a must
- ⚡ Adherence to solicitation is mandatory
- ⚡ No substitute for poor market research
- ⚡ Use judiciously - abundance of set-aside programs
